



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-567 (Advisory Opinion Proceeding 3)]

Certain Foam Footwear; Notice of the Issuance of an Advisory Opinion; Termination of the Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue an advisory opinion in the above-captioned investigation. The Commission also terminates the advisory opinion proceeding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. of Niwot, Colorado. 71 FR 27514-15 (May 11, 2006). The complaint alleged, *inter alia*, violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1-2 of U.S. Patent No. 6,993,858 ("the '858 patent") and U.S. Patent No. D517,789 ("the '789 patent"). The notice of investigation named several respondents.

On July 25, 2008, the Commission issued a final determination finding no violation of section 337 based on non-infringement and failure to satisfy the technical prong of the domestic industry requirement with respect to the '789 patent and based on invalidity of the '858 patent as obvious under 35 U.S.C. 103. 73 FR 45073-74 (Aug. 1, 2008). On July 15, 2011, after an appeal to the U.S. Court of Appeals for the Federal Circuit and subsequent remand vacating the Commission's previous finding of no violation, the Commission found a violation of section 337 based on infringement of the asserted claims of the patents and issued, *inter alia*, a general exclusion order ("GEO"). 76 FR 43723-24 (July 21, 2011). On March 28, 2020, the '789 patent expired, so the GEO is now only directed to articles that infringe one or more of claims 1 and 2 of the '858 patent.

On November 17, 2021, non-respondent, Triple T Trading Ltd. ("Triple T") of Marysville, Washington, petitioned for institution of an expedited advisory opinion proceeding to determine whether its fleece-lined shoes and shoes with plastic washers are covered by the GEO. On November 29, 2021, Crocs opposed Triple T's petition for an expedited advisory opinion proceeding. On December 9, 2021, Triple T filed a motion for leave to respond to Crocs' opposition. The Commission granted that motion.

On December 17, 2021, the Commission instituted an advisory opinion proceeding to determine whether Triple T's fleece-lined shoes or shoes with plastic washers fall within the scope of the GEO. 86 FR 72992 (Dec. 23, 2021). Concurrent with the notice, the Commission ordered supplemental information and product samples from Triple T. Comm'n Order (Dec. 17, 2021). On January 4, 2022, Triple T submitted its response to the Commission Order. Crocs did not reply to Triple T's submission.

Having considered the record evidence including the parties' filings, the Commission has determined that Triple T's fleece-lined shoes and shoes with permanent plastic washers that prevent all direct contact between the strap and the base of the shoe do not fall within the scope of the GEO and therefore should not be excluded. The reasons for the Commission's

determination are set forth in the accompanying Advisory Opinion, and the advisory opinion proceeding is hereby terminated.

The Commission vote for this determination took place on March 28, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 28, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

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